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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Trust in the Lord with all your heart, and lean not on your own understanding; in all your ways acknowledge Him, and He shall direct your paths'' (Proverbs 3:5–6).

Let us pray: Gracious God, You only ask from us what You generously offer to give to us. You initiate this conversation we call prayer because You want to bless us with exactly what we will need to live faithful, confident, productive, joyous lives today. You are for us; not against us. Help us to live the hours of today knowing You are beside, are on our side, and offer us unlimited strength and courage besides. You will provide us insight and inspiration to confront and solve the problems we face. You will give us peace when our hearts are distressed by the turbulence of our times. You will comfort us when we are afraid and need Your peace. You make us overcomers when we feel overwhelmed. In response we relinquish our imagined control over people and circumstances. We thank You for the power of Your wisdom we feel surging into our minds and hearts. We trust in You, dear God, for You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we will once again resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. Senator HATCH will be here to continue to discuss the merits of this well-qualified nominee and our hope is for an up-or-down vote.

Under the order of last week, at 5 p.m. the Senate will proceed to the consideration of calendar No. 19, S. 3, the partial-birth abortion ban bill, with the time until 6 p.m. equally divided for debate. I understand that Senator MURRAY will be here to offer an amendment to that legislation, and thus I encourage Members who would like to debate that amendment to remain after the scheduled 6 p.m. vote this evening.

The rollcall vote will be on the nomination of Gregory Frost to be a U.S. District Judge for the Southern District of Ohio.

For the remainder of the week, we will continue consideration of the partial-birth abortion bill and should complete action of that bill this week.

In addition, on Tuesday, tomorrow, from 11 a.m. to 12:30 we will consider the Estrada nomination for the purpose of discussion regarding the Senate's constitutional role of advise and consent. I encourage all Members to be present to participate in this institutional debate.

Rollcall votes will occur each day this week as we attempt to complete the items mentioned.

I thank all Members.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I want to direct a question through you to the majority leader. Tomorrow from 11 to 12:30, is that going to be equally divided?

Mr. FRIST. Mr. President, the intention is to be equally divided. I would like it to be back and forth, if we can do that.

Let me take this opportunity to say that the purpose is because we are all running around doing so many different things over the course of the day. I ask my Senate colleagues to pay attention to what I am about to say because the purpose is to bring as many people to the floor to listen and discuss and debate what the Constitution says and our interpretation of the Constitution at an elevated level. That is the purpose in setting aside that time from 11 to 12:30.

Time should be equally divided, and look for some outstanding discussion on what is a very important principle in our Constitution.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session and resume consideration of the executive calendar No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, with respect to the Estrada nomination, this Senator has no reason to vote to confirm and everyone should understand up front that I have treated my responsibility with serious purpose, always giving the benefit of the doubt to the President. I was one of the two Democrats who voted for Robert Bork, and I am particularly proud that I did vote for him. Robert Bork was an outstanding jurist. He answered the questions.

So when these folks come up and apply for a job, they ought to treat the advise and consent responsibility that we have as Senators with respect. They should not go to the committee and give the rope-a-dope runaround and then come back later and have the White House calling Senators saying: Would you like to see the gentleman?

I have heard the whining cry again and again that this is all unconstitutional. I wish they would have been present when Justice Fortas, the Associate Justice for the Supreme Court, was nominated by President Lyndon Johnson to become the Chief Justice. My senior colleague at the time, the distinguished Senator Thurmond, led the filibuster. There was extended debate, and please note it in the RECORD that they had a cloture vote. They could not get cloture and—read it in the RECORD—they then withdrew the nomination.

The leadership in the Senate should get on with the important business of this Government at a time of war, at a time of dreadful deficit spending, at a time when they will not even pay for the war. I can say now that every President, every Congress, has paid for wars, and I am embarrassed to be a Senator at this particular time to go home to my state and report that we are not going to pay for this war. It was Abraham Lincoln, in order to pay for the Civil War, who put a tax on dividends. And now this President says the need of the hour is to take the tax off dividends.

During World War I we had a marginal income tax rate that went up to 77 percent. In World War II, it was 79 percent to 94 percent. In the Korean War, it was 91 percent, and the country sustained. The country did not break up. The country did not go poor. The country was stimulated by a sense of responsibility. This Mickey Mouse idea that dividends are going to stimulate the economy—come on. In the Vietnam War, we had a marginal tax rate up to 77 percent. But we have the unmitigated gall to now say we need to stimulate the economy with a dividend tax cut, with doing away with the marriage penalty, and with eliminating the estate tax.

It is quite obvious what is on course is tax reform. There is no sense of responsibility for this position. It helped when, with Senator Muskie, we passed in 1973 and it was finally signed in 1974 the Budget Committee process. I have served on that Budget Committee for the past 25, 26 years, including as Chairman. I am the author, along with Senator Gramm and Senator Rudman, of Gramm-Rudman-Hollings when President Reagan said we were not going to have to run deficits anymore. We had truth in budgeting.

On Saturday, we got the truth from the Congressional Budget Office. It projected the pending deficit for the fiscal year which we are in now, 2003, on page 21, at the back of the document would be $469 billion. The distinguished Presiding Officer knows this by heart because he has served on the Budget Committee on the House side. This is important because that is the actual debt increase, that is the actual deficit.

I ask unanimous consent to have printed in the RECORD the lead editorial from today's Washington Post, ''Digging the Budget Hole.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 10, 2003]

DIGGING THE DEFICIT HOLE

The deficit numbers grow ever grimmer. The Congressional Budget Office on Friday put out a new estimate for this fiscal year in which the projected deficit is 24 percent higher than the CBO had anticipated two months ago, mostly owing to the faltering economy. Meanwhile, Congress this week will begin outlining a course for federal spending and tax cuts that would push the country further into a deficit hole. So it seems like an opportune moment to pause for a reminder of how we got into this mess, how bad it is and how bad it could be if President Bush's tax wishes come to pass.

First, what happened to the surplus? It was only two years ago that the CBO foresaw a surplus of $5.6 trillion through 2011. Back then, administration officials, insisting that Mr. Bush's $1.3 trillion tax cut was easily affordable, dismissed warnings that the surplus could be illusory. The forecasts could ''just as easily be wrong on the low side as the high side,'' said White House budget director Mitchell E. Daniels Jr. Now, even without new tax cuts, the surplus has evaporated and the administration is airbrushing its previous statements. ''We didn't squander a surplus. We never had it,'' Treasury Secretary John W. Snow told the House Budget Committee. ''It wasn't real dollars in hand.''

The biggest reason those dollars failed to materialize, particularly in the short term, is the faltering economy. But over 10 years, according to CBO projections, the major drag on the nation's fiscal health will be the cost of the 2001 tax cut and increased spending. A sobering report last week by the Committee for Economic Development (CED), a nonpartisan group of business leaders, spelled this out: ''In short, while a substantial portion of the current fiscal deterioration can be blamed on the economy, responsibility for the fiscal set-back in later years lies squarely on the shoulders of policymakers.''

Now build in the effect of Mr. Bush's $1.5 trillion in new tax proposals. The part that Congress will take up immediately, projected to cost $726 billion through 2013, includes the immediate implementation of the 2001 tax cuts, much of which was to have been phased in over time, and the elimination of the individual income tax on corporate dividends. But Mr. Bush also wants Congress to make his 2001 tax cuts permanent; currently they're scheduled to expire in 2010. In interest costs alone, the Bush proposals would impose an additional $530 billion. Overall, according to the new CBO figures, the administration's tax and spending proposals would cost $2.7 trillion. The bottom line, according to the CBO: cumulative deficits of $1.8 trillion through 2013 if Mr. Bush gets his way.

But the real fiscal picture is even worse. Remember the Social Security lockbox? It has been broken open. The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund. In other words, if that money were placed out of reach, the deficit would be $4.4 trillion through 2013. Moreover, those numbers don't reflect the cost of fixing the alternative minimum tax, which was designed to prevent the wealthy from wriggling out of taxes but is projected to apply to a third of all taxpayers by 2010. The administration has proposed a short-term fix; extending that fix through 2013 would cost $750 billion. Likewise, these figures don't take into account the likely increases in spending to cover an Iraq war and its aftermath, homeland security or a prescription drug benefit for seniors. Nor do they include the growing demands on Social Security and Medicare that will materialize when baby boomers start to reach retirement age just five years from now.

''The first step in climbing out of a hole is to stop digging,'' the CED report said. ''We cannot afford economic policy decisions today that further raise deficits tomorrow.'' Congress ought to put down that shovel.

Mr. HOLLINGS. Everyone can read the entire article, but let me read the sentence: ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund.'' I have to read that again: ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund.''

The following sentence: ''In other words, if that money were placed out of reach, the deficit would be $4.4 trillion through 2013.'' Now, that is just the Social Security trust fund. The Social Security trust fund is not the only one being expended. There is the Medicare trust fund. They take the surpluses, and they are going to say we have to do something on Medicare, but they have been spending the moneys on anything and everything other than Medicare. The same can be said with the highway trust funds, the airport trust funds, and the military and public service retirees. We have all kinds of trust funds, and if they were all included, rather than the $4.4 trillion, it would be $5.7 trillion.

This Enron-like accounting operation is right in the President's budget book. If you look at page 1—and I hold within my hand the budget for the fiscal year 2004 that was just released last month—it says: ''My administration firmly believes in controlling the deficit and reducing it as the economy strengthens and our national security interests are met. Compared to the overall Federal budget and the $10.5 trillion national economy, our budget cap is small by historical standards.''

That is on page 1. Now, Kenny Boy Lay, when he put out his Enron corporate report to the stockholders, that

is exactly the way he would start off. Make the stockholders feel good. Make the taxpayers feel good. Make the public servants feel responsible. But where is the truth? You will have to go all the way through to page 332.

I ask unanimous consent that page 332, by itself, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE S–14.—FEDERAL GOVERNMENT FINANCING AND DEBT—Continued

[In billions of dollars]

Function	2002 actual	Estimates					
		2003	2004	2005	2006	2007	2008
Debt outstanding, end of year:							
Gross Federal debt[7]:							
Debt issued by Treasury	6,171	6,725	7,294	7,811	8,327	8,832	9,363
Debt issued by other agencies	27	27	27	26	26	26	25
Total, gross Federal debt	6,198	6,752	7,321	7,837	8,353	8,858	9,388
Held by:							
Debt held by Government accounts	2,658	2,874	3,155	3,451	3,751	4,061	4,385
Debt issued by the public[8]	3,540	3,878	4,166	4,387	4,603	4,797	5,003

[7] Treasury securities held by the public and zero-coupon bonds held by Government accounts are almost all measured at sales price plus amortized discount or less amortized premium. Agency debt securities are almost all measured at face value. Treasury securities in the Government account series are measured at face value less unrealized discount (if any).

[8] At the end of 2002, the Federal Reserve Banks held $604.2 billion of federal securities and the rest of the public held $2,936.2 billion. Debt held by the Federal Reserve Banks is not estimated for future years.

Mr. HOLLINGS. Mr. President, you will see the total gross Federal debt whereby it goes from $6.198 trillion at the end of last fiscal year to, as projected at the end of this fiscal year, $6.752 trillion, for a deficit of $554 billion. And they are running around here, in this newspaper, continuing to say $300 billion deficits. We already are projecting, without the cost of Iraq—this does not include the cost of going to war in Iraq—a $554 billion deficit. And if you look at next year, the 2004 debt is increased from $6.752 trillion to $7.321 trillion, for a deficit of $569 billion for next year.

On Wednesday, at the Budget Committee, the fix will be in. We used to have some moderates on the Budget Committee, but the leadership took the moderates off, so it will be bam-bam.

On Wednesday the Committee will have a conference and then on Thursday we will have amendments. It will be the Democrats who will have amendments because the Republicans are a fixed jury. They are a fixed jury, and they are not going to go along with any amendments, and they are going along with the President's budget and the President's tax cut because that is the makeup of the Republicans when they got rid of the moderates.

Before that we at least had a chance to talk and discuss with each other, but now the budget process that we instituted back in 1974 is pure sham. Their goal is to get those reconciliation instructions that by majority vote they will have. Then by majority vote they can pass all these tax cuts and everything else that they have, under limited time. You can't have extended debate. So the fix is on—unfortunately for the country.

According to the Committee for Economic Development, ''The first step in climbing out of a hole is to stop digging. We cannot afford economic policy decisions today that further raise deficits tomorrow.''

Congress ought to put down that shovel. That is the most important thing we have going, even more important than war. I think we can win the war. I don't think we are going to win this. This is terrible.

I ask unanimous consent to have printed in the RECORD the ''Hollings' Budget Realities'' chart.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOLLINGS' BUDGET REALITIES

Pres. and year	U.S. budget (outlays) (in billions)	Borrowed trust funds (billions)	Unified deficit with trust funds (billions)	Actual deficit without trust funds (billions)	National debt (billions)	Annual increases in spending for interest (billions)
Truman:						
1947	34.5	−9.9	4.0	+13.9	257.1	
1948	29.8	6.7	11.8	+5.1	252.0	
1949	38.8	1.2	0.6	−0.6	252.6	
1950	42.6	1.2	−3.1	−4.3	256.9	
1951	45.5	4.5	6.1	+1.6	255.3	
1952	67.7	2.3	−1.5	−3.8	259.1	
Eisenhower:						
1953	76.1	0.4	−6.5	−6.9	266.0	
1954	70.9	3.6	−1.2	−4.8	270.8	
1955	68.4	0.6	−3.0	−3.6	274.4	
1956	70.6	2.2	3.9	+1.7	272.7	
1957	76.6	3.0	3.4	+0.4	272.3	
1958	82.4	4.6	−2.8	−7.4	279.7	
1959	92.1	−5.0	−12.8	−7.8	287.5	
1960	92.2	3.3	0.3	−3.0	290.5	
Kennedy:						
1961	97.7	−1.2	−3.3	−2.1	292.6	
1962	106.8	3.2	−7.1	−10.3	302.9	9.1
Johnson:						
1963	111.3	2.6	−4.8	−7.4	310.3	9.9
1964	118.5	−0.1	−5.9	−5.8	316.1	10.7
1965	118.2	4.8	−1.4	−6.2	322.3	11.3
1966	134.5	2.5	−3.7	−6.2	328.5	12.0
1967	157.5	3.3	−8.6	−11.9	340.4	13.4
1968	178.1	3.1	−25.2	−28.3	368.7	14.6
Nixon:						
1969	183.6	0.3	3.2	+2.9	365.8	16.6
1970	195.6	12.3	−2.8	−15.1	380.9	19.3
1971	210.2	4.3	−23.0	−27.3	408.2	21.0
1972	230.7	4.3	−23.4	−27.7	435.9	21.8
1973	245.7	15.5	−14.9	−30.4	466.3	24.2
1974	269.4	11.5	−6.1	−17.6	483.9	29.3
Ford:						
1975	332.3	4.8	−53.2	−58.0	541.9	32.7
1976	371.8	13.4	−73.7	−87.1	629.0	37.1
Carter:						
1977	409.2	23.7	−53.7	−77.4	706.4	41.9
1978	458.7	11.0	−59.2	−70.2	776.6	48.7
1979	504.0	12.2	−40.7	−52.9	829.5	59.9
1980	590.9	5.8	−73.8	−79.6	909.1	74.8
Reagan:						
1981	678.2	6.7	−79.0	−85.7	994.8	95.5
1982	745.8	14.5	−128.0	−142.5	1,137.3	117.2
1983	808.4	26.6	−207.8	−234.4	1,371.7	128.7
1984	851.9	7.6	−185.4	−193.0	1,564.7	153.9

HOLLINGS' BUDGET REALITIES—Continued

Pres. and year	U.S. budget (outlays) (in billions)	Borrowed trust funds (billions)	Unified deficit with trust funds (billions)	Actual deficit without trust funds (billions)	National debt (billions)	Annual increases in spending for interest (billions)
1985	946.4	40.5	−212.3	−252.8	1,817.5	178.9
1986	990.5	81.9	−221.2	−303.1	2,120.6	190.3
1987	1,004.1	75.7	−149.8	−225.5	2,346.1	195.3
1988	1,064.5	100.0	−155.2	−255.2	2,601.3	214.1
Bush:						
1989	1,143.7	114.2	−152.5	−266.7	2,868.3	240.9
1990	1,253.2	117.4	−221.2	−338.6	3,206.6	264.7
1991	1,324.4	122.5	−269.4	−391.9	3,598.5	285.5
1992	1,381.7	113.2	−290.4	−403.6	4,002.1	292.3
Clinton:						
1993	1,409.5	94.2	−255.1	−349.3	4,351.4	292.5
1994	1,461.9	89.0	−203.3	−292.3	4,643.7	296.3
1995	1,515.8	113.3	−164.0	−277.3	4,921.0	332.4
1996	1,560.6	153.4	−107.5	−260.9	5,181.9	344.0
1997	1,601.3	165.8	−22.0	−187.8	5,369.7	355.8
1998	1,652.6	178.2	69.2	−109.0	5,478.7	363.8
1999	1,703.0	251.8	124.4	−127.4	5,606.1	353.5
2000	1,789.0	258.9	236.2	−22.7	5,628.8	362.0
Bush:						
2001	1,863.9	268.2	127.1	−141.1	5,769.9	359.5
2002	2,011.0	270.7	−157.8	−428.5	6,198.4	332.5
2003	2,120.7	222.3	−199.2	468.6	6,619.9	324.1

Note.—Historical Tables. Budget of the US Government: Beginning in 1962, CBO's The Budget and Economic Outlook: Fiscal Years 2004–2013, January 2003.

Mr. HOLLINGS. What will happen when we have the budget debate is they will have leadership amendments. They will have something on prescription drugs and they will have something on some other thing, whatever it is. Then the real important ones you submit for 2 minutes. You describe your amendment and everybody votes. Senators will not get the opportunity to see this, so I hope they will all get this out of the CONGRESSIONAL RECORD.

When you talk about digging that hole, let me show you the hole we are really in. If, we have a deficit of $554 billion for this year, and last year we had a $428 billion deficit, and next year they project a $569 billion deficit—that, added together, is $1.5 trillion. That is $1.5 trillion of stimulus. We don't need a little dividend cut, or a little marriage penalty elimination to stimulate the economy. What we need is money and certainly not tax cuts, certainly not digging the hole. You are in a dickens of a hole if you are already in $1.5 trillion in deficit without the cost of Iraq.

For my colleagues, let me try to put this in perspective. If you add up all the deficits from Harry Truman in 1945 to Gerald Ford in 1975—if you take the 30 years cumulative of all deficits, which include the cost of World War II, the cost of Korea, the cost of Vietnam—it adds up to $358 billion. We are already talking, not $300 some billion over 30 years, but we are talking about $554 billion this year without the cost of Iraq.

You are in real trouble when you have to estimate that and you see the interest cost now. Lyndon Johnson was the last President to balance the budget. In 1968–1969 he had a surplus. That is the last time. I was here.

In fact, we met over on the House side, the distinguished chair—George Mahon was chairman of the Appropriations Committee. We didn't have a Budget Committee. I am almost convinced that we ought to go back to that because there was a conscience. This whole budget process has now become a charade.

But George Mahon said, you know the President is very, very sensitive about this guns and butter. We have to do something else, a little bit more if we are really going to balance it. He said, Call over to Marvin Watson and ask the President if we can cut another $5 billion, and we cut another $5 billion. If I am not mistaken, the budget at that time for guns, butter, the war in Vietnam was $178 billion.

Now we have a budget of almost $2.1 trillion. We pay $324 billion in interest per year—it is estimated that when the interest rates go back up, it will be back up to a billion a day in interest.

The first thing the Government does every morning at 8 when the banks open is borrow another $1 billion, every morning except Sunday this year. They are going to go down every day, including Saturday, including holidays. They will go down and borrow and add it to the debt. That is why we are running this $554 billion deficit.

But these interest costs are just saddling us, when we are paying over $300-some billion in interest, as much as the defense budget, and all just waste just because we didn't pay our way. We used to pay our way. We used to pay for the war. Yes, tell my friend Robert Novak when he constantly says we are going to pay for the war by borrowing just like we did for guns and butter in Vietnam—no, no. President Lyndon Johnson paid and balanced the budget then.

You have seen exactly what the score is with respect to digging a hole. I want to get right into the point of this so-called tax cut because nobody was better at stopping digging the hole and recognizing it, of course, than Mr. David Stockman. I had just come off the chairmanship of the Budget Committee, and I went over with Mr. Alan Greenspan to the Blair House and briefed President Reagan in December of 1980. I will never forget, the President said:

> Whoops, I had promised to balance the budget in 1 year. From what you gentlemen are telling me it is going to take 3 years.

That is when we went from a 1-year budget to 3 years. In 1981, I opposed those tax cuts, Reaganomics, what George Bush senior called voodoo. I opposed voodoo I. I opposed the increase in spending at that time because we all had a sense of responsibility. In order to stick it out and be able to serve around here, you have to go with the flow like the traffic in downtown Hanoi.

Listen to this, from page 342 of ''The Triumph of Politics'':

> The President had no choice but to repeal or substantially dilute the tax cut that would have gone far toward restoring the stability of the strongest capitalist economy in the world. Ronald Reagan chose not to be a leader but a politician. His obstinacy was destined to keep America's economy hostage to the errors of his advisers for a long, long time.

So under President Reagan, we had an $85.7 billion deficit in 1981, and it went up to $142.5 billion in 1982. That is when he was cutting taxes.

The next thing you know it was up to $234 billion and he ended up with a $252 billion deficit by his eighth year in office.

Then President George Herbert Walker Bush came in and he ended up with a $403 billion deficit. We never had over $100 billion in deficit until voodoo I came along.

Let me talk about voodoo II. I watched that because I have been in the budget lead now for quite some time. I come from a State where in order to be elected governor you have to promise to pay the bill. But in that same State, in order to be elected to the Senate you have to promise not to pay the bill. I am against the government of let us cut taxes. So I know whereof I speak. I have experience in the budget.

What happened when Governor Bush in September of 2000 said on the campaign trail said he was going to cut taxes. I sort of shook my head and smiled. I said, Well, that is campaign talk. That is not going to happen for the simple reason that we can't afford to be cutting taxes. But I sort of sobered up on the Friday after the election—on Tuesday in November 2000.

That is when Vice President-elect CHENEY said, Yes, that is what we are going to do. When Vice President-elect CHENEY said we were going to cut taxes, there was no recession yet.

Please listen. Harken all. Lend me your ears, for I can tell you what really started that recession in 2001. It was when Alan Greenspan, the chairman of the Federal Reserve, came on January 25, 2001 before the Budget Committee and he attested to the fact that we were paying down too much debt. He gave title and interest to the young President George W. Bush. He gave him the go-ahead with this $5.6 trillion debt.

Secretary of Treasury John Snow, former head of CSX and who used to head up the Business Roundtable, was always coming into my office because we were big admirers of CSX. He was always coming in worried about the budget and the deficits. When I talked to him on the phone before he became Secretary, I said, ''John, I see you are giving up two things.'' He said, ''What's that?'' I said, ''You are giving up your membership at Augusta National Golf Club, and you have given up any chance of balancing the budget and getting this Government out of the red. You are giving up on the deficit now, and you are going to head for deficits.''

I ask unanimous consent to have this 2001 debt time line schedule printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

2001 DEBT TIMELINE

On January 25, 2001, we were $65 billion in the red.

On February 27, 2001, we were $53 billion in the red.

On April 15, 2001, we were $94 billion in the red.

On April 30, 2001, we were $13 billion in the black.

On May 1, 2001, we were $23 billion in the black.

On June 1, 2001, we were $4 billion in the black.

On June 7, 2001, the President signed the $1.7 trillion tax cut.

On June 15, 2001, we were $41 billion in the black.

On June 28, 2001, we were $52 billion in the red.

On September 10, 2001, we were $99 billion in the red.

On September 30, 2001, the end of the fiscal year, we were $141 billion in the red.

Mr. HOLLINGS. Mr. President, we have on January 25 the chairman of the Federal Reserve, Alan Greenspan, saying we are paying down too much debt.

On February 27, 2001, the President submitted his budget for the first time, and he said, in essence, I protect Social Security. I have $2.6 trillion to protect Social Security. I have $2 trillion for defense and domestic programs, and I have $1 trillion for unforeseen circumstances.

At the time Chairman Greenspan spoke, we were still in the red in deficits—$65 billion. When the distinguished President spoke on February 27 for the first time to Congress, we were $53 billion in the red. On April 15, the income tax time to make the returns, we were $94 billion in the red. But with all the tax payments coming in on April 15, by April 30 we were in the black by $13 billion. On May 1, we were $23 billion in the black. On June 1, we were $4 billion in the black. From the end of April to the first of June, we were in the black. But on June 7, the President signed the $1.7 billion tax cut, and by June 28, 20 days after he put his signature to the tax cut, we were $52 billion in the red. On September 10, we were $99 billion in the red.

They all said 9/11 caused this deficit. No. The day before 9/11, we were already, as a result of the tax cut, $99 billion in the red when the President was talking about $1 trillion for unforeseen circumstances. We have only authorized since 9/11 for the 2002 war on terrorism $20 billion. At the Congressional Budget Office they say 9/11 will only cost us $34 billion. Give them the double amount—some $60 billion that 9/11 may have cost. But it didn't cost any trillion dollars, and it didn't cause us to go back into the red. The tax cut is what we are suffering from. And thereby, as the Washington Post said, the first rule is to stop digging. But we will be meeting on Wednesday and Thursday with the Budget Committee, and there they will be determined to come in with shovels and dig as deep as they possibly can.

I happened to have fought with the French in World War II, and they are outstanding fighters. We are talking about NATO, how brave we are, how we are going into Iraq. I wish we had the courage to pay the bill. They say it is small by historical standards; that is, the deficit is 2.7 percent of the gross domestic product. But when you look at the actual debt, when they don't use Social Security, then the deficit as a percent of the gross domestic product is 5.7 percent.

The Greenspan Commission recommended that you are not to use Social Security trust funds, as the editorial points out, and that is exactly how they have lowered the deficit.

You see, when the editorial says, ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund,'' that is against the law, Senator. That is against, section 13–301, which passed the Senate 98 to 2.

I wanted it to pass unanimously, but I could not get Senator Armstrong's vote. That is the one I missed, along with Senator Boschwitz's. I had the greatest—and still have the greatest—respect for both Senator Boschwitz and Senator Armstrong. I could not get their vote, but I got everyone else's. It went to President Bush senior on November 5, 1990, and he signed that into law.

So under law, you are not supposed to be spending Social Security moneys on anything other than Social Security.

For the Social Security trust funds, you can see that here we have spent $1.489 trillion. Everybody is running around saying: Save Social Security. We are going to have to reform Social Security. We are going to have to do this and do that. All they need to do is quit spending Social Security moneys on any and everything but Social Security. That is the whole problem.

Of course, you can see what they are spending for Medicare, military retirement to civilian retirement, the unemployment compensation fund, the highways, the airports, the railroad retirement, and others.

We are spending some $2.7 trillion already of all of these other trust funds. Yet we are going to do something on account of the baby boomers? I want to do something on account of the adults and get some conscience to this group up here and some awareness to the media and everybody to understand, let's have truth in budgeting.

The Secretary of the Treasury puts it out every day—the public debt, to the penny—and you can see how much the debt goes up. The debt clock is running every second in New York for the people to see. But we give them Enron accounting. It is small here, and we have another figure here, and everything else. So you can see we are spending a little over $40-some billion per month.

I think with that chart, and the distinguished Senator from Utah being here, I am sure I am using the Hatch rule on Estrada. Under the Hatch rule, you said, on another Hispanic nominee we had at one time, that you were worried she would be an activist and would legislate from the bench. That is exactly what I am worried about with Estrada.

I appreciate the time of the body. I would be glad if somebody wants to debate Mr. Estrada. Tell them I know very little about him except for the fact that when he was given the opportunity to come up to get my vote for confirmation, he elected to rudely not answer. I know the gimmick, and I know what they are doing. I voted for Robert Bork. David Boren of Oklahoma and myself were the two Democrats who voted for Robert Bork. I am delighted to vote for conservatives. My State is conservative. But don't send a fellow up and think he can engage in that kind of monkey business of not even answering the questions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand that we are on the Executive Calendar under the executive order; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. And that we are considering the nomination of Miguel Estrada to the Tenth Circuit.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I thank the Presiding Officer.

Mr. President, I listened to my colleague from South Carolina for a good number of minutes and have always been fascinated by his review of the budget and budget processes.

I am also always frustrated by the reality of a general fund budget, in a comprehensive budget policy under which we operate, and the fungibility of moneys, and the broad general system in which we take Social Security moneys, once appropriately registered in the trust funds of Social Security, and then it being moved into the general fund of our country; that, in fact, Social Security money is spent and bonds are taken out or loans are made against the trust funds and interest is bearing and money is replaced. So to suggest that trust fund moneys cannot be spent once they have been appropriately accounted for is a frustration.

But let me stop there because I came to the floor this afternoon to once again speak about Miguel Estrada and his nomination and, of course, where the Senate is at this moment in time, which is not only important for all of us but important for the judiciary of our country, that we are able to bring to the floor of the Senate highly qualified men and women who have been appropriately vetted by the administration—no matter what administration it is—and that the nominations of these people are reviewed by the Judiciary Committee and then brought to the floor for a vote.

What has gone on here for well over 4 weeks is the denial of that opportunity to vote. We did have a vote last week. It was a cloture vote. It is part of the inside ball game of the Senate that oftentimes those who are observers of what we do do not understand.

We got 55 votes, if you will, for Miguel Estrada. My goodness, that is 50 percent plus 5 of a 100-member body. Surely, that would confirm this fine judicial nominee.

Quite to the contrary, it was a cloture vote. Under a cloture vote, with a supermajority rule in the rules of the Senate, it simply says you have to get 60 before you have the right to get 50 plus 1 of those present and voting.

That has to be awfully confusing for anyone listening or observing. Clearly, the rules of the Senate are to make sure that our Constitution is upheld, or at least a prescription of our Constitution, that requires that all States enter in and are members of the United States under our Constitution and are equal in the Senate. Therefore, we have historically, and appropriately so, erred on the side of protecting the minority. And that, of course, is the cloture process: to make sure that a supermajority finally decides it is time to vote on an issue.

I hope that over the course of the next several weeks we can gain cloture and that we can get to the real vote, the honest vote, the fair vote, the appropriate vote of 50 plus 1 of those present and voting for the confirmation of Miguel Estrada under the advice and consent clause of our Constitution.

Let me recap, for a few moments, some of the arguments we have heard on the floor of the Senate over the last several weeks about this fine nominee: We are asked, if you will, to rubberstamp everyone the President sends up, and we should not inquire, we should not be probative, we should not look into the individual's background.

Well, that is an interesting argument, but it echoes in such a hollow way on the floor of the Senate when you look at the reality and the fact that Mr. Estrada has been before the Judiciary Committee for over 2 years and that we have had now a very extensive filibuster—or shall I say extended debate—that has talked about almost every aspect of Miguel Estrada's professional life—his career and his life in general; that he was thoroughly investigated by the FBI, and those records were brought to the Judiciary Committee for all of us to examine, and somehow we are no ''rubberstamping,'' after literally hundreds and hundreds of pages of material, and the process of this investigation is now compiled in the Judiciary Committee on Mr. Estrada.

Rubberstamping? I think not. Rubberstamping is not when any Senator can vote how he or she wishes. We are not suggesting that everybody vote yes. We are suggesting that everybody vote—yes or no, up or down—and that Mr. Miguel Estrada be given his day, as should the President be given the right to have his or her nominees brought to the floor for an up-or-down vote.

I say to my colleagues on the other side, that ain't a rubberstamp; that is doing what you are asked to do when you are sworn in as a Member of the Senate—to vote up or down on the issue, face the tough votes, face the easy votes. I have one job here, as do 99 other Senators, and that is to come to the floor of the Senate and vote. That is what my State asks. That is the role I play for my State. That is all our President asks. I am quite sure that is what Miguel Estrada would like.

Our colleagues have complained that Mr. Estrada is a ''blank slate;'' that there is not enough information for Senators to be able to make a responsible judgment about his ability to serve.

You have heard my colleague from South Carolina say not all the questions have been answered. Well, Miguel Estrada has literally called every Senator's office and said, ''I will come and visit with you and I will respond to your questions.'' But, no, that is not good enough. We don't want him in our office; we want him before the committee again responding to the questions that the committee would choose to ask and, of course, we would like more of the record that he compiled while serving in the Justice Department under both Democrat and Republican Presidents.

It is a very frustrating time we have here when, in fact, that which they argue has been answered not only once but twice or a hundred times over. When you, therefore, compile all of this and analyze the record, there has to be something more than just the background, just the information. I think it is, in fact, the politics of the issue today, and the effort on the part of the far left to cause the Democrat Party to try to deny Miguel Estrada his day on the floor of the Senate in an up-or-down vote with Members present and voting.

Let me talk a little bit about some of the questions asked. I am quoting from a phenomenally comprehensive letter which was sent to the Senate by the legal counsel at the White House. I have it here. It is 15 pages. Counsel to the President, Judge Gonzales, sent this up on February 12. It goes into great detail. I thought for a few moments I would, once again, for the record, talk of some of that detail and some of the answers that both Miguel Estrada has responded to and that Judge Gonzales, legal counsel to the White House, has responded to—only for those who are concerned about the CONGRESSIONAL RECORD that we compile here to clearly understand that the arguments placed by the other side are so hollow, they have hardly no echo today, because questions have been asked and answers have been given.

Miguel Estrada answered the committee's questions—and this is according to Judge Gonzales. I was not there at the time. I now serve on the Judiciary Committee, but these questions were leveled at Miguel Estrada in the 107th Congress. I was not a member of the committee at that time.

Miguel Estrada answered the Committee's questions forthrightly and appropriately. Indeed, Miguel Estrada was more expansive than many judicial nominees traditionally have been in Senate hearings, and he was asked a far broader range of questions than many previous appeals court nominees were asked.

He goes on to catalog the questions and the answers in the area of rights, privacy and abortion, unenumerated rights.

When asked by Senator Edwards about the Constitution's protection for rights not enumerated in the Constitution, Mr. Estrada replied: ''I recognize that the Supreme Court has said [on] numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution, and I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the court. But I think the court has been quite clear that there are a number of unenumerated rights in the Constitution. In the main, the court has recognized them as being inherent in the right of substantive due process and the liberty clause of the Fourteenth Amendment.

When asked by Senator Feinstein whether the Constitution encompasses a right to privacy and abortion, Mr. Estrada responded, ''The Supreme Court has so held, and I have no view of any nature whatsoever, whether it be legal, philosophical, moral, or any other type of view that would keep me from applying that case law faithfully.'' When asked whether Roe v. Wade was ''settled law,'' Mr. Estrada replied, ''I believe so.''

That is a pretty straightforward answer. That is as clear as you can get on issues of privacy and abortion. I cannot understand why the other side cannot accept that as a responsible and clear answer.

General approach to judging.

In other words, what is your philosophy? How do you react?

When asked by Senator Edwards about judicial review, Mr. Estrada explained: ''Courts take the laws that have been passed by you [meaning the Senate] and give you the benefit of understanding that you take the same oath that they do to uphold the Constitution, and therefore they take the laws with the presumption that they are constitutional. It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments—why it is that the legislature went beyond [its] role as a legislature and invaded the Constitution.''

Mr. Estrada stated to Senator Edwards that there are 200 years of Supreme Court precedent and that it is not the case that ''the appropriate conduct of the courts is to be guided solely by the bare text of the Constitution because that is not the legal system that we have.

In other words, he was talking to that precedent in relation to the strictness of the Constitution.

When asked by Senator Edwards whether he was a strict constructionist, Mr. Estrada replied that he was ''a fair constructionist,'' meaning that, ''I don't think that it should be the goal of the courts to be strict or lax. The goal of the court is to be right. . . . It is not necessarily the case in my mind that, for example, all parts of the Constitution are suitable for the same type of interpretive analysis. . . . [T]he Constitution says, for example, that you must be 35 years old to be our chief executive. . . . There are areas of the Constitution that are more open-ended. And you adverted to one, like the substantive component of due process clauses, where there are other methods of interpretation that are not quite so obvious that the court has brought to bear to try to bring forth what the appropriate answer should be.

That is an understandable answer when the law is as specifically as 35 years; that is interpretive. When the Constitution gives you the opportunity for some interpretation, of due process, then of course that goes to the fair-mindedness of the individual judge involved within the framework of precedent so ruled.

When Senator KOHL asked him about the environmental statutes, for example, Mr. Estrada explained that those statutes come to court with a ''strong presumption of constitutionality.'' In other words, there is a presumption that those laws that the Congress of the United States passes are constitutional by their passage, only later to be tested in the courts to find out how constitutional or if they can withstand that test.

In response to Senator LEAHY, Mr. Estrada described the most important attributes of a judge:

The most important quality for a judge, in my view, Senator LEAHY, is to have an appropriate process for decisionmaking. That entails having an open mind. It entails listening to the parties, reading the briefs, going back beyond those briefs and doing all of the legwork needed to ascertain who is right in his or her claims as to what the law says and what the facts [are]. In a court of appeals court, where judges sit in panels of three, it is important to engage in deliberation and give ear to the views of colleagues who may have come to different conclusions. And in sum, to be committed to judging as a process that is intended to give us the right answer, not to a result.

In other words, not to what had been planned or anticipated but the right answer in relation to the law and the Constitution.

And I can give you my level best solemn assurance that I firmly think I do have those qualities or else I would not have accepted the nomination.

Here, of course, he is talking about his own character, his own makeup, the thinking processes that have allowed Miguel Estrada over the years to rise as far as he has and to be recognized by most as a very brilliant legal mind.

In response to Senator DURBIN, Miguel Estrada stated that:

The Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains.

Mr. Estrada indicated to Senator DURBIN that he admires the judges for whom he clerked: Justice Kennedy, Judge Kearse, as well as Justice Lewis Powell.

Miguel Estrada stated to Senator DURBIN:

I can absolutely assure the committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced with subsequent decisions by the Supreme Court itself.

That is an interesting and a very important response to a question that many will argue he has not been asked or he has denied or refused to answer. Let me repeat that. When asked about how he will respond to certain cases brought before the court as it relates to decisions made by the Supreme Court, he said:

I can absolutely assure the committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced by subsequent decisions of the Supreme Court itself.

In response to Senator GRASSLEY, Mr. Estrada stated:

When facing a problem for which there is not a decisive precedent from a higher court, my cardinal rule would be to seize aid from any place where I can get it. Depending on the nature of the problem, that would include related case law in other areas that higher courts had dealt with that had some insight to teach with respect to the problem at hand. It could include the history of the enactment, including a statute's legislative history. It should include the custom and practice under any statute or document. It should include the views of the academicians to the extent they purport to analyze what the law is, instead of prescribing what it should be. And in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

There is a very open, probative, bright mind responding to that kind of question. You go to the resources at hand to ultimately compile the information from which to make a decision, to make judgment.

In response to Senator SESSIONS, Mr. Estrada said:

I am firmly of the view that although we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case by starting withholding judgment with an open mind and an answer to the parties. So I think the job of a judge is to put all of that aside and, to the best of his human capacity, to give a judgment based solely on the arguments and the law.

Again, straightforward, very clear answers with which I think all should be satisfied.

In response to Senator SESSIONS, Mr. Estrada stated:

I will follow binding case law in every case. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide in accordance with binding case law and even in accordance with the case law that is not binding but seems constructive on that area, without any influence whatsoever from my personal view I may have about the subject matter.

The letter goes on to deal with Miranda, with congressional authority, ethnicity, racial discrimination, right to counsel, congressional authority to regulate firearms—phenomenally complete responses to very critical questions that speak to the mind and the legal training of a tremendous talent whose nomination we now have before us.

Somehow that is not good enough. Somehow our colleagues on the other side, time and again, have said: No, no, we need to go back to the committee to ask the questions. We need now all of the legal drafts and the memos that are a part of Mr. Estrada's record at the Justice Department when he worked there for both Presidents Bush, Sr. and President Clinton and, of course, Democrats and Republicans alike have said those are simply off the record and we cannot go there, nor should we go there.

The question is: Why go there at this time when we now have such a very complete record that speaks to the mind, the temperament, the judgment, the talent of Miguel Estrada? I think the answer is quite simple: We should not.

There is a simpler answer, and it is one we seek and one we have asked our colleagues for, and that is the right for an up-or-down vote on the floor of the Senate. Under the advise and consent clause of our Constitution, I am one who firmly believes that is the responsibility of the Senate, to review, to analyze, to be probative, as we have, but ultimately to bring a President's nominee to the floor for the purpose of a vote, a 50-percent plus 1 vote of those present and voting. I firmly believe that.

We are going to continue to pursue the confirmation of Miguel Estrada, as we must. We can simply not allow a nominee to come to the floor and for those who are in opposition to simply

filibuster until all are exhausted and we all retreat into the shadows because no one wants to vote up or down. That is quite the opposite in this case. We clearly do need a vote. We want a vote. Let us not hide behind the supermajority in this instance. That is not an excuse for the ultimate oath of office that we have taken and the responsibility that we have at hand as Senators.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Ms. MIKULSKI are printed in today's RECORD under ''Morning Business.'')

Ms. MIKULSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. JEFFORDS are found in today's RECORD under ''Morning Business.'')

Mr. JEFFORDS. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I inquire of the Presiding Officer, are we now automatically returned to the period of time allocated to the pending nomination for the circuit court of appeals?

The PRESIDING OFFICER. The Senate is now in executive session on the Estrada nomination. That is the pending order of business.

Mr. WARNER. I thank the distinguished Presiding Officer.

Mr. President, article II, section 2 of the Constitution provides that the President:

> Shall nominate by, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States. . . .

As I read that historic phrase, and reflect and study on the history behind it, I reach the conclusion that these are coequal powers as it relates to the Federal judiciary responsibilities. They are balanced powers and, as such, they give strength to that time-honored doctrine of checks and balances between the three separate but coequal branches of our Federal Government.

The debate before us today goes to the very heart of our Constitution and the doctrine of checks and balances. As such, we should examine the very roots of our Republic to determine these respective responsibilities of the three branches of our Government.

The magnificence of the ''great experiment,'' a term used by the skeptics of the work of our Founding Fathers, is what has enabled our Republic to stand today, after over 200 years, as the longest surviving democratic form of government still in existence.

I remember one time I used that phrase in an audience of some very erudite individuals. One person jumped to their feet and said: Oh, no, Switzerland. And I reminded them that Napoleon crossed the Alps and severed the continuity of that wonderful government.

So there we are, these proud States, forming our Republic known as the United States. The survival of that great experiment is dependent upon the continuous fulfillment of the balanced, individual responsibilities of the three branches of our Government.

I reflect now on the history of that clause ''advice and consent.''

During the Constitutional Convention, the Framers labored extensively over this clause, deferring for several months a final decision on how to select Federal judges. Some of the Framers argued that the President should have absolute and total authority to choose members of the judiciary. Others thought both the House of Representatives and the Senate should be involved in providing advice and consent. Ultimately, a compromise plan put forth by that distinguished Virginian, James Madison, won the day where the President would nominate the judges, and only the Senate, only one branch of the Congress, would render advice and consent. Such a process is entirely consistent with the system of checks and balances, that inherent doctrine in the Constitution that the Framers carefully placed throughout many provisions of the Constitution.

Presidents select those who should serve on the judiciary, thereby providing a philosophical composition of that President and the times in which he is privileged to serve in that office. However, the Senate has a check on the President because it is the final arbiter with respect to a nominee. But I look at those responsibilities as coequal, a check and a balance, but neither branch of Government, executive nor the legislative, has a power greater. I think they are coequal in the exercise of joint responsibility to, in fact, create the third branch, the Federal judiciary, through this process.

Historically, judicial nominations have needed only a majority of votes in the Senate for confirmation. I think that long history is for good reason. It is to preserve the inherent checks and balances and the coequal responsibility between the two branches in creating the judiciary. Only once, in these 200-plus years, has a judicial nominee been rejected by the Senate due to a filibuster. That was Abe Fortas, a nominee for the Supreme Court.

Indeed, a simple majority of votes in support of the confirmation of a nominee is also consistent with the Constitution which specifically spells out instances where, for example, a supermajority of votes is needed. For example, under the Constitution, two-thirds of the Senate must vote to ratify a treaty. Two-thirds of the Senate must vote to convict on an article of impeachment. Two-thirds of a House of Congress must vote to expel a Member of that body. Two-thirds of each House of Congress must vote to override a President's veto, and two-thirds of each House must vote to propose an amendment to the Constitution.

So when the Framers wanted to change the power structure as it relates to the respective duties of the branches, it did so expressly by creating the two-thirds supermajority vote.

In this instance, we are talking about a Senate rule which requires 60 votes to stop a filibuster. It is not constitutional. It is a Senate rule. The Framers did not think a supermajority was needed. The Framers probably did not have in mind the possibility someday of a 60-vote filibuster.

So I come back that it is clear that the Constitution wanted to have a coequal responsibility and balance of power between the two branches as it related to their respective functions in forming and creating the Federal judiciary.

If the Framers intended judicial nominees to be subjected to a supermajority vote, they would have included such language in the Constitution. In my view, the reason they did not include a supermajority requirement in regard to judicial confirmations is that otherwise it might prove too difficult for certain judicial nominees to be confirmed. If the bar was set too high, then the Senate would have far more power in the judicial process than the President. The checks and balances concept of our Founding Fathers would cease.

Is this what the Framers intended, that that inherent balance of power should in any way be violated? Absolutely not. We do not want the checks and balances concept to cease in the case of judicial nominations.

I recognize the filibuster, a rule created by the Senate itself and not by the Constitution, obviously does require the Senate to have 60 votes in certain circumstances in order for it to proceed. But in the context of judicial nominations, use of the filibuster to defeat a nominee would thwart the carefully crafted system of checks and balances put into place in our Constitution by the infinite wisdom of the Framers of that Constitution.

Throughout the quarter of a century I have been privileged and had the honor of representing the Commonwealth of Virginia in the Senate, I have conscientiously in each of those years under all of the Presidents I have served with made the effort to work on judicial nominations in a fair and objective way, recognizing the doctrine of checks and balances and the coequal authority of the two branches.

Whether our President was President Carter, President Ronald Reagan, President George Bush, President Clinton, or President George W. Bush, I have been privileged to accord equal weight to the nominations of all Presidents, irrespective of party. I have done so because of my belief that if the concept of equal power sharing and the concept of checks and balances was lost in the judicial confirmation process, then we may ultimately discourage many highly qualified men and women nominees from offering to serve in our judiciary.

Certainly each Senator is entitled to vote for or against a particular nominee for any reason he or she deems important. And it is clear our Framers did not intend the Senate's role in the advice and consent process to be a rubberstamp. No one is suggesting that. Exercise your authority. Exercise your judgment. Do it fairly. Do it consistently with the doctrine of checks and balances inherent in the Constitution.

This much is evident from history. Soon after the Constitution was ratified, the Senate rejected a nomination put forward by our first President, our founding father, George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. Even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

The key differences between the Rutledge nomination of over 200 years ago and the Estrada nomination of today is that Mr. Rutledge received an up-or-down vote. A simple majority controlled. The early Members of our Senate, some of whom participated in the Constitutional Convention, allowed an up-or-down vote on Mr. Rutledge even though they opposed him.

On the other hand, Mr. Estrada has not received a vote and he is being subjected to a filibuster-proof majority for confirmation.

Our Founding Fathers, I say to my colleagues, were not so prudent of the requirement for the 60 votes.

Mr. Estrada is being opposed simply because of his political ideology. In the view of this Senator we ought to accord equal weight to a President's nominees, irrespective of party. I have tried to abide by this principle throughout my 25 years in the U.S. Senate.

For example, in the 106th Congress and the 107th Congress, I was honored to support the nomination of Roger Gregory. Judge Gregory was originally nominated by President Clinton and he was supported by Virginia's former Democratic Governor Doug Wilder.

Regardless of political ideologies, and regardless of which President nominated him, Judge Gregory was highly qualified to sit on the bench. We are fortunate to have him on the United States Court of Appeals for the Fourth Circuit. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

Like Judge Gregory, Miguel Estrada's nomination is also a clear-cut case.

Mr. Estrada has received a unanimous ranking of ''well qualified'' by the American Bar Association. In my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But, just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went onto serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before federal district courts and federal appeals courts. He has argued 15 cases before the U.S. Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

In closing, Mr. President, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's constitutional responsibility to render ''advice and consent'' after a fair process of evaluating a President's nominee. After that process is complete, nominees who emerge from the Judiciary Committee ought to be accorded up or down vote.

Should a Senate rule overrule the Constitutional responsibilities of checks and balances? I think it should not.

Thomas Jefferson once remarked on the independence of our three branches of government by stating, ''The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other.''

I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves:

Is the current filibuster of Miguel Estrada's consistent with our country's last 200 plus years since our Constitution was ratified?

Are we fulfilling our constitutional responsibilities to preserve the doctrine of checks and balances?

In my view, we don't want to set a precedent that alters the inherent responsibilities of checks and balances in the judicial confirmation process.

But, these questions are for each Senator to decide upon.

I for one, though, fear the precedent that would be set if the Senate does not support cloture for Miguel Estrada and I fear what it might mean for the future of our Judiciary, and the future of our Republic.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the scheduled vote this evening on the Frost nomination now occur at 5:45, provided that debate time from 5 p.m. to 5:45 p.m. be equally divided as under the earlier order.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we are now on a piece of legislation known